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THE INTERIM

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JANUARY 1996 HELENA, MONTANA VOL. X NO. 8

JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

Commission Meets in Billings...The Juvenile Justice and Mental Health Study Commission held its third meeting on December 7 and 8 in Billings. The Commission took testimony from the general public and from providers of juvenile services; toured the Youth Services Center and the Yellowstone Treatment Center; and heard Randy Bellingham of the Youth Justice Advisory Council.

This was the first working meeting for the Subcommittees on Reorganization and System Coordination, Mental Health and Justice Issues, and the Youth Court Act. Each Subcommittee narrowed the list of topics for further study and has made requests for further information. The Reorganization and System Coordination Subcommittee will meet January 29 in Helena at the Department of Corrections.

To Hold Fourth Meeting in Helena...The Commission's fourth regional meeting is scheduled in Helena on February 12 and 13. The meeting will include additional subcommittee work, information regarding programs in Mental Health Region IV, national speakers, and public testimony.

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SUBCOMMITTEE ON VETERANS' NEEDS

Subcommittee Holds First Meeting... The Subcommittee on Veterans' Needs held its first meeting on Thursday, December 14 and elected Representative John Johnson, Glendive, as Chair. The election for Vice Chair is pending. The Subcommittee heard from James Jacobsen, Administrator of the Veterans Affairs Division; Maureen Rude, Board of Housing; Joe Underkofler, Administrator of Fort Harrison; Bob Anderson, Administrator of the former Special Services Division at the Department of Corrections; Polly Latray-Halmes, Veterans Employment and Training; Major Joe Foster, Montana Army National Guard; a citizen concerned about streamlining efforts recently announced regarding the VA and Fort Harrison; and representatives from the Veterans of Foreign Wars, Disabled American Veterans, and the American Legion.

Subcommittee Adopts Study Plan... The Subcommittee adopted a study plan to:

- (1) have staff assist the Board of Housing in developing variables on veterans' housing needs for future surveys;
- (2) draft enabling legislation for development of an eastern Montana veterans' cemetery;
- (3) monitor the progress at the Eastern Montana Veterans' Home and explore the differences in individual financial participation between the Eastern Montana Veterans' Home and the Montana Veterans' Home at Columbia Falls;
- (4) develop enabling legislation for National Guard member educational benefits; and
- (5) review the veterans' preference law.

Subcommittee Expresses Concern to Federal Agencies... The Subcommittee also approved sending letters of concern to the Department of Veterans Affairs on the streamlining at Fort Harrison; to the Food and Drug Administration opposing regulations to make cigarettes and tobacco restrictive drugs; and to the federal Department of Labor protesting a change in the residency requirements for the Director of Veterans Employment and Training. Removing the residency requirement could result in the regionalization of the position and the possible removal of the Director from Montana. Currently 21 states, including Montana, would be affected by this change.

To Meet Next in Glendive... The Subcommittee has requested information on the study issues for its next meeting to be held in Glendive at the Eastern Montana Veterans' Home in May. The Subcommittee anticipates a third meeting in August to wrap up its interim work and to finalize any recommendations.

GAMING ADVISORY COUNCIL

Council to Hold Demonstration... The Gaming Advisory Council will meet on January 17 and 18 in Room 325 (Old Supreme Court Chambers) of the State Capitol. The Council is chaired by Senator Sharon Estrada.

On January 17 at 9 a.m., the Council will host a manufacturers' demonstration of automated computer accounting and monitoring systems for video gambling machines. Legislators are especially invited to attend this demonstration.

For further information about the demonstration, please contact Wilbur Rehmann at the Gambling Control Division, (406)444-1971.

LEGISLATIVE SERVICES DIVISION

LEGAL SERVICES OFFICE

Ballot measures received:

- Revise Auto Liability Insurance (Birkholz) (Withdrawn)
- Resolution by Initiative (Birkholz)
- Clean Water and Public Health Protection (France)

Note: Pursuant to 13-27-202(2), MCA, copies of correspondence regarding the proposed ballot measures are available through the Secretary of State, (406)444-2034.

LIBRARY

Committee Minutes Available...All House standing committee minutes from the 1995 session are now available at the Historical Society Archives [225 N. Roberts, Helena, MT 59620-1201 (406)444-4775]. Conversion of the final sets to microfiche should take another few weeks. If the Senate Natural Resources Committee minutes are not yet available at that time, a partial set will be distributed. The final set of fiche will be mailed when it is available.

If you have questions about the status of a particular set of minutes, please call the Library at (406)444-3064.

ENVIRONMENTAL QUALITY COUNCIL

EQC and Subcommittees Meet in December...During the second week of December, the Environmental Quality Council (EQC) and its appointed subcommittees met for four days. The following is a summary of each meeting and subsequent EQC actions.

House Bill 412 Environmental Self-Audit Working Group...As a part of its HJR 10 Enforcement and Compliance Study, the EQC is studying the environmental self-audit issues that were raised in House Bill No. 412 during the 1995 legislative session. A meeting of interested and affected parties was held on Friday, December 1. The purpose of the meeting was to discuss how the EQC should proceed in studying these issues. The interested and affected parties recommended to the EQC that a working group be formed to analyze environmental self-auditing issues and that the working group make a determination as to the feasibility of any consensus recommendations.

The Enforcement and Compliance Subcommittee, at its December 7th meeting, adopted the working group's environmental self-audit study process recommendations.

Enforcement and Compliance Subcommittee...On December 6, the Enforcement and Compliance Subcommittee heard presentations on the status of compliance and enforcement programs within the Department of Natural Resources and Conservation (DNRC). The DNRC programs include the Water Resources Division, the Conservation and Resource Development Division, and the Forestry Division. On December 7, from 8:30 a.m. to 12 p.m., the Subcommittee reconvened and heard responses from the regulated community and public interest organizations on the enforcement and compliance processes of the hardrock, coal, and opencut programs of the Department of Environmental Quality (DEQ).

The EQC, at its December 8th meeting, received an update from the Subcommittee Chair and Vice Chair on the progress of the study process.

Montana Environmental Policy Act (MEPA) Subcommittee...The EQC MEPA Subcommittee heard updates on: state agency implementation of private property right considerations as amended into the Montana Environmental Policy Act; DEQ reorganization and MEPA implementation; EQC MEPA implementation training; and criteria for the George Darrow MEPA award. The Subcommittee recommended to the EQC that it continue its oversight of state agency implementation of private property right considerations within the MEPA review process. The Subcommittee also recommended that the EQC develop selection criteria for the George Darrow MEPA award.

The EQC, at its December 8th meeting, adopted the MEPA Subcommittee recommendations.

Environmental Quality Council...On December 7, at the Helena College of Technology, the Council participated in a video teleconference panel discussion on environmental risk assessment and prioritization. On December 8, the Council heard updates from the Montana Environmental Policy Act Implementation Subcommittee and the HJR 10 Enforcement and Compliance Subcommittee. The Council also received updates on the Fish, Wildlife, and Parks water leasing program, the House Bill 472 instream flow process, and the natural resource agency reorganization process.

The EQC decided to abandon the environmental risk assessment and prioritization process and instead conduct a baseline information environmental indicators process. Other Council actions included requesting updates at future meetings on the Pony Mine situation and the implementation of House Bill 472, the instream flow bill.

For more information on these issues, please contact the EQC staff at (406)444-3742.

REVENUE OVERSIGHT COMMITTEE

Committee to Meet in February...The Revenue Oversight Committee will meet on February 2 in Room 104 of the State Capitol. Although the agenda has not been finalized, the Committee will consider issues related to the rail car tax, motor vehicle taxes, and the beneficial use tax (property tax) as it might apply to ski resorts located on federal land. The Committee will also hear presentations concerning dual taxation on the Crow Indian Reservation. The Department of Revenue will present a

report on its technology capabilities and requirements. In conjunction with that report, the Committee will have a demonstration of the Department's computer-assisted mass appraisal system.

LEGISLATIVE COUNCIL

Council to Hear From Subcommittees...The Legislative Council will meet Friday, January 26. Two of the Council's Subcommittees, Mission and Legislative Improvement, and Personnel, plan to meet Thursday, January 25.

One of the major items for consideration will be a review of the nearly final NCSL classification and pay review of Legislative Branch positions. The Personnel Subcommittee will review the draft report at some length with the principals at the Thursday meeting, then the Legislative Council will have an opportunity to review the findings the next day as well.

Over the last several months, members of the Mission and Legislative Improvement Subcommittee have been compiling recommendations for legislative improvement from a wide variety of people with an interest in the Legislature. The members will bring their findings together for a day of evaluation on the 25th.

Council to Discuss Capitol Renovation...The Council will meet with the Capitol Consulting Team of architects, engineers, and others who are shouldering the planning responsibility for the current Capitol renovation effort. This will help fulfill the Council's responsibilities under 5-11-115, MCA, to recommend construction and remodeling priorities for the Capitol.

Other Business to be Discussed...Other business will include establishing a process for selecting a replacement to fill the vacancy on the National Conference of Commissioners on Uniform State Laws created by the resignation of Kalispell attorney Jim Vidal; review and approval of reorganizations being implemented in response to Branch consolidation; continued monitoring of the use and development of information technology in the Branch; an update on the SJR 4 study of session committee minutes; and other matters that undoubtedly will appear prior to the meeting.

LEGISLATIVE REORGANIZATION

Legislative Reorganization Continues...The Legislative Auditor, Legislative Fiscal Analyst, and Executive Director of the Legislative Services Division recently prepared a series of statements and proposals resulting from work in the Branch designed to perfect the consolidation of the Branch under the reorganization bill. One statement included statements of mission and vision for the newly consolidated Branch staff agencies, the directors, and the reorganization effort. The second document outlines the first major functional reorganization proposal to be implemented over the next several months.

MISSIONS AND VISIONS

Legislative Branch Staff

Mission: To serve the Montana Legislature, its members, governmental units, and the public on behalf of the Legislature in support of the legislative function.

Vision: Driven by the mission of service, employees of the Legislative Branch work together as a mutually supportive team providing courteous, competent, and timely services through:

- identification with the common mission,
- understanding the several division and office missions,
- commitment to collaboration, and
- commitment to excellence.

Legislative Branch Staff Division Directors

Mission: To maintain an effective partnership for staff leadership in the Legislative Branch

Vision: The three directors work together to communicate unity of purpose in effectively leading and supporting accomplishment of all staff missions in an atmosphere of understanding, openness, trust, and mutual respect.

Legislative Branch Reorganization

Mission: To build a functional organizational structure, prepare and adopt a unified classification and pay plan, and prepare and adopt Branchwide administrative policies for the Legislative Branch designed to fulfill the requirements of law and efficiently and effectively support the delivery of Legislative Branch staff services.

Vision: By June 1, 1996, the Branch shall have fulfilled the reorganization mission by placing a foundation for long-term staff service success through:

- adopting and communicating clear missions and guiding visions for Branch development;
- forming an effective partnership for staff leadership;
- actively involving staff in designing reorganization options and details in collaborative task groups;
- effectively enlisting the support of governing legislative committees for reorganization plans and policies developed by staff;
- adopting Branch classification and pay plans;
- adopting Branchwide administrative policies and procedures;
- rearranging office space to effectively support the functional organization; and
- transferring personnel and corresponding budget authorization as needed to support the reorganization design.

EXCERPT FROM THE REORGANIZATION PROPOSAL

Proposal Overview

A Central Services Office will be created in the Legislative Services Division and will be headed by a Central Services Director. The Central Services Office will be one of five offices in the Legislative Services Division.

Legislative Services Division

Executive Director

Legal Services Office

Office of Research and Policy Analysis

Office of Legislative Information Technology

Legislative Environmental Policy Office

Central Services Office

Central Services Office

The following is an outline of the new Central Services Office. Positions new to the Legislative Services Division are marked with an asterisk. Positions currently represented in the Legislative Services Division but changed in nature by the proposal are marked with a double asterisk. Other positions are as they currently exist, although the organizational location changes. Immediate priority position changes are marked with a ✓. During the transition, the Executive Director of the Legislative Services Division will perform the Central Services Director functions with the help of the Legislative Auditor and Legislative Fiscal Analyst.

Central Services Office
Central Services Director*
Fiscal Manager*✓
Payroll, Benefits, and Accounting Technician**✓
Accounting Technician*✓
Purchasing and Inventory Coordinator*
Session Payroll Technician

Personnel Officer*

Document Processing and Session Support
Document Services Chief
Secretary
Secretary
Photocomposition Technician/Data Input
Proofreader
Proofreader
Reception and Information Officer

Session Document Distribution
Document Distribution Supervisor
Distribution Staff
Session Bill Clerk

Publications Coordinator/Session Information and
Telecommunications Officer

Session Information and Telephone Office
Information and Telecommunications Officer
Operators and Information Specialists

LEGISLATIVE AUDIT COMMITTEE

Audit Committee Meets in December...The Legislative Audit Committee met December 15 in Room 104 of the Capitol Building. The following reports were presented:

FINANCIAL-COMPLIANCE AUDIT:

State Compensation Insurance Fund, Department of Administration (95-5)

A financial-compliance audit of the State Compensation Insurance Fund was performed for the fiscal year ending June 30, 1995. The report

contains one recommendation related to recording financial activity. An unqualified opinion was issued on the financial statements contained in the audit report, which indicates that the reader can rely on the information contained in the statements.

FINANCIAL AUDITS:

State of Montana, General Purpose Financial Statements (95-1)

The Montana Comprehensive Annual Financial Report is prepared by the Department of Administration and includes three main sections: introductory, financial, and statistical. The report also includes the independent auditor's report on the General Purpose Financial Statements for fiscal year 1994-95.

Teachers' Retirement Division, Department of Administration (95-31)

The Montana Teachers' Retirement System, a component unit of the State of Montana, issues an annual report. Staff from the Teachers' Retirement Division of the Department of Administration prepare the annual report. The report includes three main sections: financial, actuarial, and statistical. The report also includes the independent auditor's report on the Teachers' Retirement System financial statements for fiscal years 1993-94 and 1994-95.

PERFORMANCE AUDIT:

Child Care Certification and Monitoring, Family Services Program, Department of Public Health and Human Services (95P-03)

This performance audit report presents recommendations for improving activities related to licensing/registering and monitoring of child care facilities in Montana. The child care function is under the Department of Public Health and Human Services, formerly Department of Family Services. The report recommends: changing the process for implementation of policies and procedures; evaluating regulations; defining authority; and developing a plan for regular, ongoing communication with staff. The department is meeting the intent of the Montana Child Care Act and is ensuring a minimum level of protection for children in day care. The regulatory activities conducted by the Department do not supplant parental care.

ELECTRONIC DATA PROCESSING FOLLOW-UP AUDITS:

Department of Labor and Industry (96DP-02)

This EDP follow-up audit discusses the implementation status of recommendations regarding the Department of Labor and Industry's

general and application controls. The original report (94DP-41 issued June 1994) contained 12 recommendations related to general controls and 10 recommendations related to application controls. The department has implemented eight recommendations, partially implemented seven, and not implemented seven. General control recommendations not implemented include such issues as programmers with production file access, group IDs, and a formal contingency plan. Application control recommendations not implemented include BeAR access, UI tax rate calculations, and UI tax rate discrepancy reports. Recommendations are discussed in more detail in the current report.

The University of Montana - Missoula (95DP-03)

This follow-up audit examines the implementation of audit recommendations from an EDP audit of the University of Montana - Missoula's computer center (93DP-38). The computer center supports instructional, research, and administrative activities by providing computing and electronic communication facilities and services to campus employees and students. The computer center also maintains UM's mainframe operations and supports several locally developed mainframe applications including: the personnel-payroll system, the College and University Financial System, and the student information system. The initial audit addressed improving general controls over UM's EDP environment. These recommendations included: improving physical security and electronic access controls, establishing formal contingency procedures, defining and improving user services, communicating existing system development policies and procedures, and establishing overall computer policies and procedures. Of the 13 initial individual recommendations, 7 are implemented, 3 are partially implemented, 2 are not implemented, and 1 is no longer applicable.

CONTRACT AUDITS:

Montana State Senate (95C-04)

The report on the Montana State Senate for the two fiscal years ending June 30, 1995, contains one recommendation related to property accounting. The audit was conducted by James J. Wosepka, Certified Public Accountant.

Montana House of Representatives (95C-04)

The report on the Montana House of Representatives for the two fiscal years ending June 30, 1995, contains no recommendations. The audit was conducted by James J. Wosepka, Certified Public Accountant.

Environmental Quality Office (95C-04)

The report on the Environmental Quality Office for the two fiscal years ending June 30, 1995, contains no recommendations. The audit was conducted by James J. Wosepka, Certified Public Accountant.

Consumer Counsel (95C-04)

The report on the Consumer Counsel for the two fiscal years ending June 30, 1995, contains no recommendations. The audit was conducted by James J. Wosepka, Certified Public Accountant.

Legislative Fiscal Analyst (95C-04)

The report on the Legislative Fiscal Analyst's Office for the two fiscal years ending June 30, 1995, contains one recommendation related to property accounting. The audit was conducted by James J. Wosepka, Certified Public Accountant.

Legislative Council (95C-04)

The report on the Legislative Council for the two fiscal years ending June 30, 1995, contains one recommendation related to property accounting. The audit was conducted by James J. Wosepka, Certified Public Accountant.

Legislative Auditor's Office (95C-05)

The report on the Legislative Auditor's Office for the two fiscal years ending June 30, 1995, contains no recommendations. The audit was conducted by James J. Wosepka, Certified Public Accountant.

To Meet Again in February...The next meeting of the Legislative Audit Committee is scheduled for February 9, 1996.

SUBCOMMITTEE ON FOREIGN INVESTMENT DEPOSITORY

Subcommittee Meets in Helena...The Subcommittee on Foreign Investment Depository met at the State Capitol in Helena on Friday, December 1. The primary focus in the morning was on the fiscal dimension of the proposed Depository. The Subcommittee started this discussion with several assumptions:

- (1) A state charter would enable a private firm to provide limited, specialized services; the depository would not be a

full-fledged bank. However, the most likely candidates for a charter would be: (a) a subsidiary of a U.S. bank; (b) a subsidiary of a non-U.S. bank; or (c) a new, privately held corporation.

- (2) Depositors would not be much concerned about rates of return on their "investment" in this facility. Rather, their preeminent concerns would be relative confidentiality and isolation and security against theft, corruption, and expropriation. The depository is designed primarily to maintain unbreakable nest eggs.
- (3) Most of the funds on deposit would not be invested on behalf of the foreign clients, but would remain idle and illiquid. Some funds might be invested in tax-exempt instruments, others in precious metals--such as platinum--to insure clients against depreciation of their currency assets. Another possible investment "product" would be an annuity, with benefits to be paid to the client after a predetermined number of years.
- (4) The Depository would earn a profit by charging fees to the depositors. Some fees would be imposed on a monthly, semiannual, or annual basis; others would be directly related to services provided (such as currency conversion or the placement of investments).

With these assumptions in view, participants in the discussion helped the Subcommittee toward tentative answers to a number of questions, including the following:

- How much corporate income tax might the state collect from the Depository in a year, assuming that the profitability of the Depository is similar to that of preexisting financial institutions?
- If the Depository made investments on behalf of depositors and assuming the depositors themselves would be exempt from personal income tax on the interest earnings, would the institution itself be taxed on any income it derived from its investment activity?
- If a transaction tax or fee were charged by the state and applied against every deposit (and/or withdrawal?), what would be a reasonable rate? Might the tax be applied in such a way as to optimize the state's interest in collecting revenue AND discouraging the frequent movement of capital out of the Depository?

Discussants included Lynn Chenoweth, Corporation Tax Bureau Chief at the Department of Revenue; Don Hutchinson, Commissioner of Financial Institutions from the Department of Commerce; George Bennett, representing the Montana Bankers Association; Steve Bender, from the Governor's Office of Budget and Program Planning; and Jeff Martin, from the Legislative Office of Research and Policy Analysis. Mr. Chenoweth described how corporate income taxes are assessed and collected. Mr. Hutchinson explained the fee structure for financial institutions seeking a state charter. Mr. Bender reminded the Subcommittee that under state law, 80 percent of the corporate tax on a bank is disbursed to the local government in which the institution resides. Mr. Martin offered some calculations as to how large and profitable the Depository would need to be, given current tax structures and rates, in order to generate the billion dollars in revenue that has been talked about since the study began last August.

Other topics of discussion included the possibility of linking foreign deposits to purchases of platinum bars (or coins) produced in Montana by the Stillwater Mining Company operations at Nye and Columbus. The idea is that depositors might not be interested in interest-generating investments but would like to secure the value of their initial deposit by trading it for a physical asset and store of value that is more stable than most currencies.

The Subcommittee also heard Roseanne Richeson from the State Auditor's Office and Steve Kalgaard from Montana International Insurance Company describe the type of private deposit insurance that would be required by the Depository. Lloyd's of London is one of several consortia that engage in such ventures.

There was further discussion of privacy issues (primarily a legal matter) and the array of direct and indirect benefits that the Depository might bring to Montana in the areas of foreign tourism, technology, and advanced education. Kirt Dennis from the newly established World Trade Center at the University of Montana in Missoula told the Subcommittee that he and other business students were hopeful about the enhanced job prospects that an international financial facility in Montana would entail.

To Meet Next in Billings...The next meeting is scheduled for January 25 and 26 at the First Interstate Bank in Billings. Representatives from the U.S. Treasury Department, the Federal Reserve, several large banks, consulting firms, and the offices of Montana's Congressional Delegation are expected to participate, as well as agents of prospective depositors themselves. A tour of the Stillwater platinum mine is tentatively scheduled on the morning of January 25.

For further information, please contact Stephen Maly, Legislative Services Division, (406)444-3064.

CAPITOL RESTORATION PROJECT

Capitol Restoration Project Begins...The Department of Administration (Department) began the process of implementing the Capitol Restoration Project at an informational project kickoff on December 7. The meeting was organized to outline the proposed project planning process, discuss project goals, and seek input from interested parties. The project will begin in earnest in January.

The Department has formed a Capitol Advisory Group (CAG), chaired by Department Director Lois Menzies, to provide input over the course of the project. The Legislature is represented on the CAG by the majority and minority leaders of both Houses and also by a representative from the legislative divisions. This broad-based group also has representatives from each of the offices occupying the Capitol building, the Montana Historical Society, and the Capitol Restoration Commission, as well as five members of the public at large.

Consulting Team to Focus on User Needs...The Department will work with the Capitol Consulting Team of A&E Architects, P.C., to design a project that meets the needs of the Capitol's occupants and users while maintaining the historic fabric of the building. During the week of January 8, the Consulting Team will begin interviews with stakeholders in an effort to delineate and prioritize the needs in the building. This set of interviews will focus mainly on space and technology needs in the facility. Representative legislators and legislative staff members will be among those interviewed during this phase of the process.

Information will be distilled and shared with the Legislative Council, which has the statutory duty to advise the Department on space allocation in the Capitol, prior to any recommendations going to the full CAG for final presentation and discussion.

Planning Decisions to Involve Many...Over the ensuing months, similar processes will begin for other areas of the project in order to develop the full program for the Capitol restoration. Technical and topical working groups will be formed to provide input and discuss strategies for program implementation. All final recommendations will be reviewed by the CAG. Only after all of the primary planning decisions have been made can design and implementation begin.

Project to Take at Least Three Years...A project of this size and complexity naturally has a rather lengthy implementation phase. The Department hopes to begin work on the exterior in the summer of 1996; completion will take at least two years given the necessity for winter breaks. In the meantime, a new sound system for the House Chambers and improved restroom facilities for female legislators will be completed in time for the 1997 legislative session. Major internal infrastructure work

is not currently scheduled to occur before the adjournment of the 1997 Legislature, with completion by 1999, barring special sessions or the possible change in regular sessions.

Stay Tuned for Further Details...The Department intends to provide frequent project updates in THE INTERIM and will be available to make brief presentations to any interim legislative committees that desire updates. For more detailed information on the project, contact Debra Fulton, Administrator, General Services Division, (406)444-3060.

THE BACK PAGE

The 1995 Montana Legislature passed Senate Joint Resolution No. 19 to study the feasibility of establishing a Foreign Investment Depository in Montana. For the last five months, the Subcommittee on Foreign Investment Depository has been diligently working to determine if such a depository is a good idea for Montana. In this month's "The Back Page", Stephen Maly, Subcommittee Research Analyst, provides some insight into the nature of the Depository itself and its probable customers.

THE ANNOTATED SJR

by Stephen Maly, Research Analyst
Legislative Services Division

INTRODUCTION

"If you build it, they will come." This is surely the most memorable line in the 1989 Kevin Costner baseball fantasy called "Field of Dreams". It is also a phrase that keeps cropping up in discussions about the prospective financial institution envisioned in Senate Joint Resolution 19 (SJR 19), the legislative vehicle that set in motion an interim study of the feasibility of a Foreign Investment Depository. The optimism inherent in such words is also implicit in the resolution itself, and although there are many people inside and outside Montana who regard the depository concept as flawed, off-beam, or worse, dangerous, the eight-member Subcommittee undertaking this study has yet to encounter anyone willing to say outright and unequivocally that it just cannot be done, period.

What we have learned so far, after four instructive meetings, is that one plausible outcome of "building" a foreign investment depository in Montana-in other words, enabling it to be built via a state charter and on the basis of fresh statutory foundations-is that hundreds of millions of dollars of foreign capital will start to flow into the Treasure State and that this sizeable river of cash could create new, high-skill, and technically demanding jobs; generate revenue for the general fund; and perhaps boost demand for gold, silver, and platinum products. Another plausible outcome is that nobody will come; the state will have created an attractive market niche, but for a variety of competitive, legal, and locational reasons, no private entity will move in to fill it. This is certainly not the intended result, but it is a far better one than that posited by a number of U.S. Treasury Department officials and some members of Montana's law enforcement establishment, which is that if the

Legislature facilitates the creation of the Depository, all the wrong people will come: money launderers, scam artists, and thoroughly bad apples looking for a place to hide their worm-infested wealth.

The proposed Foreign Investment Depository (Depository, from here on) is nothing like a baseball field. When proponents speak the "if you build it, they will come" line, interested (and generally skeptical) citizens are quick to ask, "Build what?", followed by "Who is they?". My purpose in this brief article is neither to answer these questions definitively nor to evade them entirely. Because the interim study is still underway, the Depository's structural design, service features, and clientele have yet to be defined in exact terms. (A skeletal outline is provided below.) At the same time, however, the resolution itself still serves as a helpful point of reference and orientation. In its five "whereas" clauses, there are fairly solid indications of what the Depository is and who it would serve.

What follows are observations and preliminary findings that elaborate more fully on these components of SJR 19. (Similar treatment of the three study objectives of the resolution will have to wait for a later issue of *THE INTERIM*.) I hope that these annotations will help readers to both gauge the current status of this interim study and understand the more general process of evolution a study entails from its assumption-based genesis through dense thickets of facts, figures, and contradictory perceptions.

"WHEREAS, Montana law provides for the establishment of state-chartered investment companies that are not subject to federal regulation . . ."

The specific law referred to here is 32-1-108, MCA, which dates back to 1927 and defines an "investment company", one purpose of which is "to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors . . ." Interestingly, this statute has never been used; it also seemed to fit, at first blush, the presumed service structure of the Depository, which would include the safeguarding of money and tangible assets for a fee, with no interest payments made to or tax liability incurred by the individual depositor. However, in the course of its study, the Subcommittee has learned that the investment company statute is not a good vehicle for the Depository. For one thing, 32-1-108, MCA, is embedded in Montana's general banking laws, and an investment company would therefore be subject to a broader range of requirements than necessary. The Depository would not engage in lending, for example, but under current law, it would be treated as a "bank", to which many complicated legal provisions automatically pertain.

The further assumption that a state-chartered Depository would not be subject to federal regulation has also proved to be problematic and contingent on certain factors and choices that are still open for discussion. While it is true that under the United States' dual banking system, some state-chartered financial institutions are examined solely by state regulatory authorities rather than the Federal Reserve, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency, the likelihood that Montana's special legislative niche for the Depository would be filled by a domestic subsidiary of a foreign (European, Canadian, Japanese) bank means that federal regulation is quite probable. Moreover, the federal Bank Secrecy Act obligates financial institutions of all kinds to submit a report to the Internal Revenue Service on virtually every cash transaction totaling \$10,000 or more. Whether or not the seeming inescapable presence of federal regulatory agencies would actually hinder the marketability of the Depository is debatable. Some Depository enthusiasts insist that the prospect of Uncle Sam poking his nose into private financial matters of great magnitude will deter foreign depositors from coming to Montana. Others contend that federal oversight could enhance the Depository's image and marketability as a "clean", relatively incorruptible institution.

"WHEREAS, Montana law also provides that state regulators keep the required financial reports of those companies confidential . . ."

From the outset, privacy has been considered an essential feature of the Depository. SJR 19 was prompted in part by chance encounters with Swiss nationals and by cursory study of offshore tax haven jurisdictions such as the Cayman Islands. Why would wealthy foreigners deposit a portion of their assets in a Montana facility if they could not be assured a level of confidentiality comparable to that offered under the laws of Switzerland, where wrongful disclosure of depositor information can bring both civil and criminal penalties? This question lingers, especially since the Montana statute referred to here (32-1-234, MCA) pertains to state employees and their treatment of certain information gathered in the process of examining bank records, but not to employees of private sector financial institutions. The Subcommittee is considering what sort of statutory embellishments to Montana's constitutional right to privacy (Article II, section 10) would be necessary to provide the maximum degree of financial privacy allowable within federal constraints. It could be that a relatively high degree of confidentiality--compared with other states, not with other countries--combined with severe penalties for wrongful disclosure, would enhance the attraction of a Montana Depository, but such limited assurances would not be sufficient by themselves to draw foreign depositors to the state.

"WHEREAS, international currency flows are increasing in frequency and volume, and the capacity of Swiss and other foreign financial institutions to accept confidential deposits is not increasing . . ."

The first part of this assumption is still solid. More than a trillion dollars worth of liquid capital traverses the globe in a shallow electronic orbit each day. This volume far exceeds what is required to finance global trade; the outsized remainder reflects growing numbers of services contracts, burgeoning currency speculation, and capital flight from politically and economically unstable regions on every continent. The second part, having to do with stagnant conditions in the private banking realm offshore, is much more iffy.

The Swiss and others have decided of late to cooperate more fully than before with the United States and others in multilateral efforts to curb illicit drug and arms trafficking by clamping down on money laundering operations. This bending of venerable traditions of bank secrecy will presumably motivate some depositors to move their assets elsewhere. But while Swiss banks are becoming more conventional (and rough and tumble offshore bank havens like Panama are drying up because of rampant corruption), the market for flight capital is not really narrowing. Strategically located and long-established international financial centers in the Caribbean (e.g., Bermuda) and the Channel Islands (between the U.K. and France) are gaining strength, while relatively new ones in Dublin, Ireland, and Madeira are coming on line. How does an out-of-the-way place like Montana fit in this picture? Once again, the answer is fuzzy, but the surest part of it has much to do with the seemingly rock-hard political stability of a state in the heart of North America, about as far from chaos and the madding crowd as one can get in today's world.

"WHEREAS, political instability in Mexico and Canada, as well as other countries, increases the likelihood that citizens of foreign countries will seek a secure haven for their financial capital . . ."

SJR 19 was drafted well after the Zapatista rebellion flared in the southern Mexican state of Chiapas, but also before the latest devaluation of the Mexican peso and the ensuing financial panic that drove billions into the U.S. as well as to European and Caribbean accounts overnight. Montana remains, for the moment, an unlikely destination for Mexican flight capital, given the state's geographic location and, more importantly, its cultural distance; Colorado has a much more accommodating climate in every way. Still, there is no telling what difference a new and different Depository might make to a Mexican (or some other Latin American) family seeking multiple and diverse hedges against disaster in their home country.

Canada is obviously a surer bet. The Subcommittee has learned that large sums have been transferred into and out of Montana bank accounts in recent years as the exchange value of the Canadian dollar has dropped to historic lows and concerns about the breakup of the country have reached all-time highs. The narrow margin of victory (1 percent!) of the pro-federalist forces in the October 30 referendum in Quebec, coupled with the dearth of popular support for the Ottawa government's attempts to woo Quebec sovereignists with worn-out promises and concessions, means that the Canadian federation will remain tenuous for some time to come. Whether Montanans are comfortable with the prospect of attracting Canadian flight capital and thus indirectly aiding and abetting the possible disintegration of a neighboring country is another question.

The "other countries" in the clause are now viewed as much more likely sources of depositors than either Mexico or Canada. Taiwan tops the list, since it has enormous currency reserves and established trade links to Montana and looks to be in increasing danger of Chinese attack. Russia and various countries in the Middle East are also possibilities.

"WHEREAS, the State of Montana stands to gain substantial financial and economic benefits in the form of tax revenue, tax relief, and increased investment from the establishment of a state-chartered or state-owned financial institution designed specifically to accept foreign deposits."

This last "whereas" mixes two distinct prospective benefits of the Depository: state revenue and investment capital. They are linked in some ways--both entail increased capacity to stimulate economic development and create new jobs--but there is no automatic causal relationship between the two. If the Depository accepted deposits that were tied to purchases of relatively immobile assets, such as gold or platinum bars, both the subsequent collectible revenue and the investment activity could turn out to be meager. In this scenario, for example, the state would collect charter (license) fees and corporate income tax from the Depository but, barring no enactment of some sort of transactions tax, little else. If, on the other hand, foreign deposits lead to direct investments in real estate, infrastructure, and new businesses and transactions within the Depository are taxed in some fashion, the rosy assumption of "substantial financial and economic benefits" starts to look quite reasonable.

CONCLUSION

Much of the promise of the Foreign Investment Depository hinges on multiple contingencies, none of which can be precisely articulated, let alone fully understood, without more discussion and inquiry. This interim

study is an educational endeavor that is building toward the Subcommittee's decision on whether or not to request draft enabling legislation. For the moment, this field of dreams is still too dimly lit to know who, if anyone, is waiting in the dugout and just what kind of game they aim to play.

THE DEPOSITORY

Main Features:

- state chartered;
- accepts deposits via wire transfer from foreign location(s);
- pays fees to state for license/charter; pays corporate taxes;
- charges fees for services; and
- engages private firm to insure deposits.

Major Services:

- accepts and converts "hard" currencies;
- provides safe deposit boxes and vaults;
- safeguards precious metals and other valuables;
- invests in tax-exempt obligations or annuities on behalf of some depositors; and
- issues credit cards to owners of cash deposits.

Optional or Alternative Characteristics:

- a branch facility of a U.S. bank;
- a branch facility or subsidiary of a foreign bank;
- a single location in Montana;
- several locations in Montana;
- singular holder of a charter (regulated monopoly); or
- faces competition in Montana for similar services.

Special Characteristic:

- offers unusually high degree of individual privacy vis-a-vis private business entities, state agencies, and federal agencies that do not have direct regulatory or law enforcement mandates.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

JANUARY

January 1, New Year's Day, holiday

January 15, Martin Luther King, Jr. Day, holiday

January 17 and 18, Gaming Advisory Council, Room 325

January 22, Committee on Postsecondary Education Policy and Budget,
Room 104, 10 a.m.

January 25, Legislative Council Subcommittee on Personnel, Room 437

January 25, Legislative Council Subcommittee on Mission and
Legislative Improvement, Room 108

January 25 and 26, Oversight Committee on Children and Families,
Room 104

January 25 and 26, Subcommittee on Foreign Investment Depository,
First Interstate Bank, Billings

January 26, Legislative Council, Room 108

January 29, Juvenile Justice and Mental Health Study Commission's
Subcommittee on Reorganization and System Coordination,
Department of Corrections

FEBRUARY

February 2, Revenue Oversight Committee, Room 104

February 5 and 6, Subcommittee on State Management Systems

February 9, Legislative Audit Committee

February 12 and 13, Juvenile Justice and Mental Health Study Commission

February 19, Lincoln's and Washington's Birthdays, holiday

February 23, Committee on Public Employee Retirement Systems

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